

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

NISUS CORPORATION,)
)
Plaintiff,)
)
v.) **No.: 3:03-CV-120**
)
PERMA-CHINK SYSTEMS, INC.,)
)
Defendant.)

MEMORANDUM OPINION

This matter is presently before the Court on Perma-Chink's motion for summary judgment of patent unenforceability due to inequitable conduct [Doc. 228], which was filed under seal on December 16, 2004. Based upon the law of inequitable conduct, Perma-Chink asserts that it is entitled to judgment as a matter of law because Nisus's counsel intentionally failed to disclose material information to the Patent and Trademark Office prior to the issuance of U.S. Patent No. 6,426,095 ("the '095 patent"). Nisus opposes summary judgment on the basis of genuine issues of material fact with regard to the materiality and intent elements of inequitable conduct as they apply to the facts of this case [*see* Doc. 304]. Oral argument was held on the summary judgment motion on April 13, 2005.

The Court has carefully considered the entire record, including the parties' briefs and arguments and the applicable law, and is of the opinion that Perma-Chink's motion for summary judgment of patent unenforceability due to inequitable conduct [Doc. 228] will be DENIED. Viewing the facts in the light most favorable to Nisus as the non-moving party, as it must, the Court

finds that Nisus has raised genuine issues of material fact on the materiality and intent elements of inequitable conduct that preclude summary judgment in favor of Perma-Chink.

ORDER ACCORDINGLY.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE